Supreme Court, U. S.
FILED
JUN 20 1977
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1976

No. 76-1388

RAYMOND N. LOWE, CORRIEN R. HILL, W.A. BROOKSBY, ABE BROOKS, G. DOUGLAS STRATTON, ALFRED BLOOM, JAMES WITZIG, CLAIRE L. NEWPORT, DIRK P. TEN BRINKE, AND E. JEAN WARE, Petitioners

v.

EUGENE SAND & GRAVEL, INC., an Oregon corporation/ AMERICAN LEGION POST NO. 3, DEPARTMENT OF OREGON, an Oregon non-profit corporation, and the CITY OF EUGENE, OF LANE COUNTY, OREGON, a municipal corporation, et al., Respondents.

****

REPLY TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

****

William G. Wheatley
Jaqua & Wheatley
825 E. Park Street
Eugene, Oregon 97401
Attorney for Respondents

Terrence J. Hammons
Hammons, Phillips & Jensen
46 Irving Road
Eugene, Oregon 97404
Counsel for Petitioners

Dudley C. Walton
435 S.E. Kane Street
Roseburg, Oregon 97470
Attorney for Respondents

Larry R. Roloff
834 Pearl Street
Eugene, Oregon 97401
Attorney for Amicus Curiae

Leslie M. Swanson
101 East Broadway
Eugene, Oregon 97401
Of Counsel for Petitioners

IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1976

No. 76-1388

RAYMOND N. LOWE, et al.,

Petitioners,

v.

EUGENE SAND & GRAVEL, INC.,
an Oregon corporation, et al.,

Respondents.

****

REPLY TO PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF OREGON

****

The Oregon Supreme Court decided all issues regarding alleged violations of the Oregon Constitution. Therefore, the only remaining issue is if the charter amendment permitting the cross to stand in Skinner's Butte Park in Eugene, Oregon has violated the U. S. Constitution.

In determining whether the governmental act in question is unconstitutional, the only

accepted tests are the purpose and effect, and excessive governmental entanglement tests. This was pointed out in the opinion of the Oregon Supreme Court on page 74 of the Petition as follows:

> "Many laws which are held to be valid despite claims of unconstitutionality for violations of separation of church and state may initially have been sponsored by a "majority" and opposed by a "minority." The only proper basis for deciding the validity of such laws, however, is whether they satisfy the three-fold test of "purpose," "primary effect" and "entanglement." If they satisfy such a test, the fact that a "majority has imposed its views" on such a minority is, of itself, immaterial."

In reviewing the facts, evidence and exhibits submitted at trial, the Oregon Supreme Court then held:

> "...that under the "changed circumstances" in this case the present display of the cross, although admittedly a "religious symbol," is not unconstitutional because the present purpose of the display is

> secular; any "effect" to "advance" or "inhibit" religion is not "primary," but is no more than "remote and incidental," and, under the restrictions imposed by the charter amendment, there is no "excessive entanglement" by the City of Eugene." (Petition for Writ of Certiorari, page 84).

Further, the suit in question was brought pursuant to Oregon statute, ORS 16.460(1), which provides that a former decree may be set aside if a change in circumstances is proved. (See footnote 3, page 69 of Petition for Writ of Certiorari). The Oregon Court was satisfied that the evidence submitted at the trial showed a sufficient change in circumstances to justify setting aside the former decree. Therefore, the issue proposed by Petitioners, that the result of this case may or may not be avoided by plebiscite, has been decided by Oregon law and fails to raise a federal question.

It is the Respondents position in this case that the case law in cases of this nature

is so clear and decisive that Petitioners fail to justify review by this court under rule 19 of the rules for the Supreme Court of the United States. Therefore, Respondents respectfully request that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

JAQUA & WHEATLEY, P.C.

By_____
William G. Wheatley, Of Attorneys for Respondent Eugene Sand & Gravel, Inc.

DUDLEY C. WALTON

_____
Attorney for Respondent American Legion Post #3

LARRY R. ROLOFF

_____
Attorney for Respondent Amicus Curiae